

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01 – SUBREGION 34**

SPRINGFIELD SYMPHONY ORCHESTRA, INC.

and

AMERICAN FEDERATION OF MUSICIANS,
LOCAL 171

Case No. 01-CA-277037

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by American Federation of Musicians, Local 171 (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Springfield Symphony Orchestra, Inc. (Respondent) has violated the Act as described below:

1(a) The charge in this proceeding was filed by the Union on May 12, 2021, and a copy was served by electronic mail (email) and regular mail on Respondent on May 13, 2021.

(b) The amended charge in this proceeding was filed by the Union on September 10, 2021 and a copy was served on Respondent by electronic mail concurrently with this Complaint and Notice of Hearing.

2. At all material times, Respondent has been a Massachusetts nonprofit corporation with an office and place of business located in Springfield, Connecticut (its facility), and has been engaged in operating a symphony orchestra.

3(a) Annually, in conducting its operations described above in paragraph 2, Respondent derives gross revenues in excess of \$1,000,000 excluding contributions which, because of limitations by the grantor, are not available for operating expenses.

(b) Annually, Respondent, in conducting its operations described above in paragraph 2, purchases and receives products, goods and materials at its facility in excess of \$5,000 directly from points located outside the Commonwealth of Massachusetts.

4. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

5. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

6. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7)(C)	---	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	---	(b) (6), (b) (7)(C)

7. At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7)(C)	---	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	---	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	---	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	---	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	---	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	---	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	---	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	---	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	---	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	---	(b) (6), (b) (7)(C)

8. The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All musicians of the Springfield Symphony Orchestra

9. At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit described above in paragraph 8. This recognition has been embodied in a series of collective-bargaining agreements, the most recent of which was effective by its terms from September 1, 2017 through August 31, 2020.

10. At all material times, based on Section 9(a) of the Act, the Union has been the designated exclusive collective bargaining representative of the Unit.

11. Since June 7, 2021 and continuing, Respondent has failed to mail and offer Individual Musician Contracts (service contracts) to the Unit for the 2021-2022 concert season as per the terms contained in the parties' expired collective-bargaining agreement.

12. The subject set forth above in paragraph 11 relates to the wages, hours, and other terms and conditions of employment of the Unit described above in paragraph 7, and is a mandatory subject of bargaining for the purposes of collective bargaining.

13. Respondent engaged in the conduct described above in paragraph 11 without first bargaining to overall good-faith impasse for a successor collective bargaining agreement.

14. By the conduct described above in paragraphs 11 and 13, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

15. The unfair labor practices of Respondent described above affect commerce within the meaning of the Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before September 27, 2021**. Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not

represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **Wednesday, December 1, 2021, at 10:00 a.m., at the A.A. Ribicoff Federal Building, 450 Main Street, Suite 410, Hartford, Connecticut**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board or a hearing will be conducted **virtually, on a platform (such as Zoom, Skype, WebEx, etc.)**, before an administrative law judge of the National Labor Relations Board. **Details related to the virtual hearing will be provided at a later date.** At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: September 13, 2021

Laura A. Sacks

Laura A. Sacks, Acting Regional Director
National Labor Relations Board
Region 01 - Subregion 34

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 01-CA-277037

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

John Anz, Acting Executive Director
Springfield Symphony Orchestra
1441 Main Street
Springfield, MA 01103
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Brenden Hughes, Esquire
Sullivan, Hayes & Quinn
1 Monarch Pl Ste 1000
Springfield, MA 01144-4005
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Local 171 American Federation
of Musicians
640 Page Blvd
Springfield, MA 01104
Regular Mail

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Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility

of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
Amended CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case

01-CA-277037

Date Filed

9/10/2021

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Springfield Symphony Orchestra (SSO)	b. Tel. No. 413-733-2291
	c. Cell No.
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 1441 Main Street	e. Employer Representative John Anz, Acting Director
	g. e-mail jan29springfieldsymphony.com
	h. Number of workers employed 100
i. Type of Establishment (factory, mine, wholesaler, etc.) Symphony Orchestra	j. Identify principal product or service Live Symphonic Music
The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(5) + 8(a)(1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) The employer has refused to bargain in good faith with the charging party Local 171 AFM by failing to adhere to the status quo terms of the expired collective bargaining agreement regarding the issuance of Individual Musician Contracts	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Local 171 AFM	
4a. Address (Street and number, city, state, and ZIP code) 640 Page Blvd MA, Springfield 01104	4b. Tel. No. 413-736-5197
	4c. Cell No.
	4d. Fax No.
	4e. e-mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) The American Federation of Musicians	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. Harvey S. Mars Esq Counsel Local 171 AFM (signature of representative or person making charge) (Print/type name and title or office, if any) 105 Chadwick Rd, Teaneck NJ 07666 Address Date Sept 10, 2021	
Tel. No. 201-401-8389	
Office, if any, Cell No.	
Fax No.	
e-mail hsm@laborlaw9.com harvey mars attorney.com	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.